

HOUSE BILL No. 1127

DIGEST OF INTRODUCED BILL

Citations Affected: IC 4-21.5-3; IC 24-4.3; IC 24-4.5-1-202.

Synopsis: Civil proceeding advance payment transactions. Defines a "civil proceeding advance payment transaction", or "CPAP transaction", as a nonrecourse transaction in which a person (CPAP provider) provides to a consumer claimant in a civil proceeding a funded amount, the repayment of which is: (1) required only if the consumer claimant prevails in the civil proceeding; and (2) sourced from the proceeds of the civil proceeding. Requires a CPAP provider to register with the department of financial institutions (department). Sets forth requirements, including disclosure requirements, for a contract (CPAP contract) entered into by a CPAP provider and a consumer claimant. Sets forth certain requirements and prohibitions with respect to CPAP transactions, including specifications for the CPAP contract amount. Permits the department to take certain actions to: (1) determine compliance with; and (2) pursue remedies for violations of; these provisions. Permits the department to adopt rules to implement these provisions. Specifies in the Uniform Consumer Credit Code (UCCC) that: (1) except: (A) for the limit on finance charges that applies to supervised loans under the UCCC, as applied to the funded amount in a CPAP transaction; and (B) as otherwise determined by a court with jurisdiction; the UCCC does not apply to a CPAP transaction; and (2) CPAP transactions and CPAP providers are subject to regulation by the department and to all applicable requirements, prohibitions, and penalties set forth in the new provisions concerning CPAP transactions.

Effective: Upon passage.

Lehman

January 7, 2016, read first time and referred to Committee on Financial Institutions.



Second Regular Session of the 119th General Assembly (2016)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

HOUSE BILL No. 1127

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 4-21.5-3-6, AS AMENDED BY P.L.153-2011,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 UPON PASSAGE]: Sec. 6. (a) Notice shall be given under this section
4 concerning the following:

5 (1) A safety order under IC 22-8-1.1.

6 (2) Any order that:

7 (A) imposes a sanction on a person or terminates a legal right,
8 duty, privilege, immunity, or other legal interest of a person;

9 (B) is not described in section 4 or 5 of this chapter or
10 IC 4-21.5-4; and

11 (C) by statute becomes effective without a proceeding under
12 this chapter if there is no request for a review of the order
13 within a specified period after the order is issued or served.

14 (3) A notice of program reimbursement or equivalent
15 determination or other notice regarding a hospital's
16 reimbursement issued by the office of Medicaid policy and
17 planning or by a contractor of the office of Medicaid policy and



1 planning regarding a hospital's year end cost settlement.

2 (4) A determination of audit findings or an equivalent
3 determination by the office of Medicaid policy and planning or by
4 a contractor of the office of Medicaid policy and planning arising
5 from a Medicaid postpayment or concurrent audit of a hospital's
6 Medicaid claims.

7 (5) A license revocation **or suspension** under:

8 (A) IC 24-4.4-2;

9 (B) IC 24-4.5-3;

10 (C) IC 28-1-29;

11 (D) IC 28-7-5;

12 (E) IC 28-8-4; or

13 (F) IC 28-8-5.

14 (6) An order issued by the:

15 (A) division of aging or the bureau of aging services; or

16 (B) division of disability and rehabilitative services or the
17 bureau of developmental disabilities services;

18 against providers regulated by the division of aging or the bureau
19 of developmental disabilities services and not licensed by the
20 state department of health under IC 16-27 or IC 16-28.

21 **(7) The denial, suspension, or revocation of a certificate of**
22 **registration under IC 24-4.3.**

23 (b) When an agency issues an order described by subsection (a), the
24 agency shall give notice to the following persons:

25 (1) Each person to whom the order is specifically directed.

26 (2) Each person to whom a law requires notice to be given.

27 A person who is entitled to notice under this subsection is not a party
28 to any proceeding resulting from the grant of a petition for review
29 under section 7 of this chapter unless the person is designated as a
30 party in the record of the proceeding.

31 (c) The notice must include the following:

32 (1) A brief description of the order.

33 (2) A brief explanation of the available procedures and the time
34 limit for seeking administrative review of the order under section
35 7 of this chapter.

36 (3) Any other information required by law.

37 (d) An order described in subsection (a) is effective fifteen (15) days
38 after the order is served, unless a statute other than this article specifies
39 a different date or the agency specifies a later date in its order. This
40 subsection does not preclude an agency from issuing, under
41 IC 4-21.5-4, an emergency or other temporary order concerning the
42 subject of an order described in subsection (a).



(e) If a petition for review of an order described in subsection (a) is filed within the period set by section 7 of this chapter and a petition for stay of effectiveness of the order is filed by a party or another person who has a pending petition for intervention in the proceeding, an administrative law judge shall, as soon as practicable, conduct a preliminary hearing to determine whether the order should be stayed in whole or in part. The burden of proof in the preliminary hearing is on the person seeking the stay. The administrative law judge may stay the order in whole or in part. The order concerning the stay may be issued after an order described in subsection (a) becomes effective. The resulting order concerning the stay shall be served on the parties and any person who has a pending petition for intervention in the proceeding. It must include a statement of the facts and law on which it is based.

SECTION 2. IC 4-21.5-3-7, AS AMENDED BY P.L.6-2012, SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. (a) To qualify for review of a personnel action to which IC 4-15-2.2 applies, a person must comply with IC 4-15-2.2-42. To qualify for review of any other order described in section 4, 5, or 6 of this chapter, a person must petition for review in a writing that does the following:

(1) States facts demonstrating that:

(A) the petitioner is a person to whom the order is specifically directed;

(B) the petitioner is aggrieved or adversely affected by the order; or

(C) the petitioner is entitled to review under any law.

(2) Includes, with respect to determinations of notice of program reimbursement and audit findings described in section 6(a)(3) and 6(a)(4) of this chapter, a statement of issues that includes:

(A) the specific findings, action, or determination of the office of Medicaid policy and planning or of a contractor of the office of Medicaid policy and planning from which the provider is appealing;

(B) the reason the provider believes that the finding, action, or determination of the office of Medicaid policy and planning or of a contractor of the office of Medicaid policy and planning was in error; and

(C) with respect to each finding, action, or determination of the office of Medicaid policy and planning or of a contractor of the office of Medicaid policy and planning, the statutes or rules that support the provider's contentions of error.



Not more than thirty (30) days after filing a petition for review under this section, and upon a finding of good cause by the administrative law judge, a person may amend the statement of issues contained in a petition for review to add one (1) or more additional issues.

(3) Is filed:

(A) with respect to an order described in section 4, 5, 6(a)(1), 6(a)(2), ~~or 6(a)(5)~~, **or 6(a)(7)** of this chapter, with the ultimate authority for the agency issuing the order within fifteen (15) days after the person is given notice of the order or any longer period set by statute; or

(B) with respect to a determination described in section 6(a)(3) or 6(a)(4) of this chapter, with the office of Medicaid policy and planning not more than one hundred eighty (180) days after the hospital is provided notice of the determination.

The issuance of an amended notice of program reimbursement by the office of Medicaid policy and planning does not extend the time within which a hospital must file a petition for review from the original notice of program reimbursement under clause (B), except for matters that are the subject of the amended notice of program reimbursement.

If the petition for review is denied, the petition shall be treated as a petition for intervention in any review initiated under subsection (d).

(b) If an agency denies a petition for review under subsection (a) and the petitioner is not allowed to intervene as a party in a proceeding resulting from the grant of the petition for review of another person, the agency shall serve a written notice on the petitioner that includes the following:

(1) A statement that the petition for review is denied.

(2) A brief explanation of the available procedures and the time limit for seeking administrative review of the denial under subsection (c).

(c) An agency shall an administrative law judge to conduct a preliminary hearing on the issue of whether a person is qualified under subsection (a) to obtain review of an order when a person requests reconsideration of the denial of review in a writing that:

(1) states facts demonstrating that the person filed a petition for review of an order described in section 4, 5, or 6 of this chapter;

(2) states facts demonstrating that the person was denied review without an evidentiary hearing; and

(3) is filed with the ultimate authority for the agency denying the review within fifteen (15) days after the notice required by



subsection (b) was served on the petitioner.
 Notice of the preliminary hearing shall be given to the parties, each person who has a pending petition for intervention in the proceeding, and any other person described by section 5(d) of this chapter. The resulting order must be served on the persons to whom notice of the preliminary hearing must be given and include a statement of the facts and law on which it is based.

(d) If a petition for review is granted, the petitioner becomes a party to the proceeding and the agency shall assign the matter to an administrative law judge or certify the matter to another agency for the assignment of an administrative law judge (if a statute transfers responsibility for a hearing on the matter to another agency). The agency granting the administrative review or the agency to which the matter is transferred may conduct informal proceedings to settle the matter to the extent allowed by law.

SECTION 3. IC 24-4.3 IS ADDED TO THE INDIANA CODE AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

ARTICLE 4.3. CIVIL PROCEEDING ADVANCE PAYMENT TRANSACTIONS

Chapter 1. Application, Construction, and Definitions

Sec. 1. This article applies to:

- (1) civil proceeding advance payment transactions; and
 - (2) civil proceeding advance payment contracts;
- offered or entered into after June 30, 2016.

Sec. 2. (a) As used in this article, "charge", with respect to a CPAP transaction, means an amount that:

- (1) is imposed by a CPAP provider and payable or assignable by or on behalf of a consumer claimant; and
- (2) is in addition to the funded amount and the contract amount;

regardless of the term used by the CPAP provider in the CPAP contract to identify the amount, or of how the amount is determined or calculated by the CPAP provider.

(b) The term includes any:

- (1) administrative, origination, or underwriting fee;
- (2) case review, case servicing, or document management fee;
- or
- (3) other fee related to services provided or costs incurred by the CPAP provider in connection with the CPAP transaction; imposed by the CPAP provider and payable or assignable by or on behalf of the consumer claimant, regardless of the term used by the



CPAP provider in the CPAP contract to identify the amount, or of how the amount is determined or calculated by the CPAP provider.

Sec. 3. (a) As used in this article, "civil proceeding" means:

- (1) a civil action;
- (2) a mediation, an arbitration, or any other alternative dispute resolution proceeding; or
- (3) an administrative proceeding before:
 - (A) an agency or instrumentality of the state; or
 - (B) a political subdivision, or an agency or instrumentality of a political subdivision, of the state;

that is filed in, or is under the jurisdiction of, a court with jurisdiction in Indiana, a tribunal in Indiana, or an agency or instrumentality described in subdivision (3) in Indiana.

(b) The term includes all proceedings arising out of or relating to the proceeding described in subsection (a), including any:

- (1) proceedings on appeal or remand; and
- (2) enforcement, ancillary, or parallel proceedings.

Sec. 4. As used in this article, "civil proceeding advance payment contract", or "CPAP contract", means a contract for a CPAP transaction that a CPAP provider enters into, or offers to enter into, with a consumer claimant.

Sec. 5. (a) As used in this article, "civil proceeding advance payment provider", or "CPAP provider", means a person that:

- (1) enters into, or offers to enter into, a CPAP transaction with a consumer claimant in connection with a civil proceeding; and
- (2) is registered with, or is required to be registered with, the department under IC 24-4.3-2.

(b) The term does not include any of the following:

- (1) An immediate family member of a consumer claimant.
- (2) A financial institution, a creditor subject to IC 24-4.5, or any other person:
 - (A) that provides financing to a CPAP provider; or
 - (B) to whom a CPAP provider grants a security interest or assigns any rights or interest in a CPAP transaction.
- (3) An attorney, an accountant, a tax consultant, a public or private benefits planning professional, or a financial professional who provides services to a consumer claimant in connection with a civil proceeding.

Sec. 6. (a) As used in this article, "civil proceeding advance payment transaction", or "CPAP transaction", means a nonrecourse transaction in which a CPAP provider provides a



1 funded amount to a consumer claimant to use for any purpose
 2 other than prosecuting the consumer claimant's civil proceeding,
 3 if the repayment of the funded amount is:

- 4 (1) required only if the consumer claimant prevails in the civil
 5 proceeding; and
 6 (2) sourced from the proceeds of the civil proceeding, whether
 7 the proceeds result from a judgment, a settlement, or some
 8 other resolution.

9 (b) The term includes a transaction:

10 (1) that is termed or described as:

11 (A) a purchase;

12 (B) an assignment of an interest in:

13 (i) a consumer claimant's civil proceeding; or

14 (ii) the proceeds of a consumer claimant's civil
 15 proceeding; or

16 (C) any other type of transaction;

17 by the CPAP provider; or

18 (2) with respect to which the CPAP provider sets forth in a
 19 CPAP contract, an agreement by:

20 (A) the CPAP provider to purchase from the consumer
 21 claimant; or

22 (B) the consumer claimant to assign to the CPAP provider;
 23 a contingent right to receive a share of the potential proceeds
 24 of the consumer claimant's civil proceeding, whether the
 25 proceeds result from a judgment, a settlement, or some other
 26 resolution.

27 Sec. 7. As used in this article, "consumer claimant" means an
 28 individual:

29 (1) who is or may become a plaintiff, a claimant, or a
 30 demandant in a civil proceeding; and

31 (2) who:

32 (A) is offered a CPAP transaction by a CPAP provider; or

33 (B) enters into a CPAP transaction with a CPAP provider;

34 regardless of whether the individual is a resident of Indiana.

35 Sec. 8. (a) As used in this article, "contract amount", with
 36 respect to a CPAP transaction, means an amount that is:

37 (1) in addition to the funded amount;

38 (2) payable or assignable to the CPAP provider only if the
 39 consumer claimant prevails in the consumer claimant's civil
 40 proceeding; and

41 (3) sourced from the proceeds of the civil proceeding, whether
 42 the proceeds result from a judgment, a settlement, or some



1 other resolution;
2 regardless of the term used by the CPAP provider in the CPAP
3 contract to identify the amount, or of how the amount is
4 determined or calculated by the CPAP provider.

5 (b) The term does not include charges.

6 Sec. 9. As used in this article, "department" refers to the
7 members of the department of financial institutions.

8 Sec. 10. As used in this article, "director" refers to the director
9 of the department of financial institutions or the director's
10 designee.

11 Sec. 11. (a) As used in this article, "funded amount", with
12 respect to a CPAP transaction, means the amount of money:

13 (1) that is provided to the consumer claimant by the CPAP
14 provider; and

15 (2) the repayment of which is:

16 (A) required only if the consumer claimant prevails in the
17 consumer claimant's civil proceeding; and

18 (B) sourced from the proceeds of the civil proceeding,
19 whether the proceeds result from a judgment, a settlement,
20 or some other resolution;

21 regardless of the term used by the CPAP provider in the CPAP
22 contract to identify the amount.

23 (b) The term does not include:

24 (1) the contract amount; or

25 (2) charges.

26 Sec. 12. As used in this article, "funding date", with respect to
27 a CPAP transaction, means the date on which a CPAP provider
28 transfers the funded amount to the consumer claimant by:

29 (1) personal delivery;

30 (2) wire, automated clearing house, or other electronic means;
31 or

32 (3) insured, certified, or registered United States mail.

33 Chapter 2. Registration of CPAP Providers With the 34 Department

35 Sec. 1. Except as provided in section 2(g) of this chapter, after
36 June 30, 2016, a person may not enter into, or offer to enter into,
37 a CPAP transaction with a consumer claimant, or otherwise
38 engage in business as a CPAP provider:

39 (1) except as authorized by this article; and

40 (2) unless the person first receives a certificate of registration
41 from the department under this chapter.

42 Sec. 2. (a) An applicant for a certificate of registration under



1 this chapter shall file an application with the department in the
 2 form and manner prescribed by the director. An application form
 3 prescribed by the director under this chapter must require the
 4 applicant to provide the information that the director determines
 5 is necessary to evaluate the character and fitness of the applicant.

6 (b) The department may issue a certificate of registration under
 7 this chapter if the department finds that an applicant's business
 8 will be operated honestly and fairly within the purposes of this
 9 article. If the department denies an application under this chapter,
 10 the director shall provide to the applicant a written notice stating
 11 that the application has been denied and setting forth the reasons
 12 for the denial. In rules adopted under:

13 (1) section 4 of this chapter; or

14 (2) IC 24-4.3-5-5;

15 the department may set forth circumstances under which a
 16 certificate issued under this chapter may be revoked or suspended
 17 for cause, including the failure of any applicant or certificate
 18 holder to pay an application fee or a renewal fee described in
 19 subsection (f). A notice of a denial, revocation, or suspension issued
 20 by the department under this subsection is effective in accordance
 21 with IC 4-21.5-3-6(d).

22 (c) Upon written request, an applicant for a certificate of
 23 registration under this chapter is entitled to an administrative
 24 review, in the manner provided in IC 4-21.5, of the issue of the
 25 applicant's qualifications for a certificate of registration under this
 26 chapter if either of the following applies:

27 (1) The director provides to the applicant a written notice that
 28 the applicant's application has been denied, as described in
 29 subsection (b), and the applicant files a timely request for a
 30 review under IC 4-21.5-3-7.

31 (2) The department does not issue a decision on the
 32 applicant's application not later than sixty (60) days after the
 33 date the application is filed, and the applicant files a request
 34 for an administrative review in accordance with the
 35 procedures set forth in IC 4-21.5-3-7 not later than
 36 seventy-five (75) days after the date the application is filed.

37 (d) A certificate of registration issued by the department under
 38 this chapter must be renewed with the department on the dates and
 39 in the manner and form prescribed by the director, but not less
 40 frequently than every two (2) years.

41 (e) If, at any time, any information contained in:

42 (1) an initial application under subsection (a); or



1 (2) a renewal form or application under subsection (d);
 2 is or becomes inaccurate or incomplete in a material respect, the
 3 applicant or registered CPAP provider promptly shall file a
 4 correcting amendment with the department in the form and
 5 manner prescribed by the director.

6 (f) The department may establish, in an amount fixed by the
 7 department under IC 28-11-3-5, either of the following to cover the
 8 department's expenses in administering this article:

9 (1) An application fee that an applicant must submit with an
 10 initial application under subsection (a).

11 (2) A renewal fee that a registered CPAP provider must
 12 submit with a renewal form or application under subsection
 13 (d).

14 The department may impose a fee under IC 28-11-3-5 for each day
 15 that an application fee or a renewal fee, or any related documents
 16 that are required to be submitted with an initial application or a
 17 renewal application, are delinquent.

18 (g) Notwithstanding subsection (a), a person that:

19 (1) before March 28, 2016, enters into one (1) or more CPAP
 20 transactions that are:

21 (A) made with a consumer claimant in connection with a
 22 civil proceeding; and

23 (B) outstanding on July 1, 2016; and

24 (2) submits an application for registration under this chapter
 25 to the department after June 30, 2016, and before January 1,
 26 2017;

27 may enter into, or offer to enter into, a CPAP transaction with a
 28 consumer claimant, or otherwise engage in business as a CPAP
 29 provider, while the person's application for registration under this
 30 chapter is pending with the department. However, if the
 31 department denies the person's application under this chapter, the
 32 person may not enter into, or offer to enter into, any new CPAP
 33 transaction during the period beginning on the effective date of the
 34 department's denial under subsection (b) and ending on the
 35 effective date of any certificate of registration subsequently issued
 36 to the person by the department under this chapter, subject to the
 37 person's right to a review under subsection (c) and to any right to
 38 a stay or an appeal of the denial available under IC 4-21.5. A
 39 CPAP transaction entered into by the person before the effective
 40 date of the department's denial under subsection (b) is not subject
 41 to this article, and a CPAP contract entered into by the person and
 42 a consumer claimant before the effective date of the department's



1 denial under subsection (b) remains in effect according to its terms,
 2 notwithstanding the division's denial of an application described in
 3 subdivision (2).

4 Sec. 3. (a) Each application for a certificate of registration
 5 under section 2 of this chapter must be accompanied by proof that
 6 the applicant has executed a surety bond in accordance with this
 7 section.

8 (b) A surety bond issued under this section must:

9 (1) be in a form prescribed by the director;

10 (2) be in effect during the term of the certificate of
 11 registration issued under this chapter;

12 (3) be payable to the department for the benefit of:

13 (A) the state; and

14 (B) consumer claimants who enter into a CPAP transaction
 15 with the CPAP provider;

16 (4) be in an amount determined by the director, but not
 17 greater than fifty thousand dollars (\$50,000); and

18 (5) have payment conditioned upon the CPAP provider's or
 19 any of the CPAP provider's employees' or agents'
 20 noncompliance with or violation of this article or other
 21 applicable federal or state laws or regulations.

22 (c) Beginning with the first renewal of a certificate of
 23 registration under this chapter, for each renewal period that a
 24 registered CPAP provider continues to engage in business as a
 25 CPAP provider in connection with any civil proceedings, the
 26 registered CPAP provider shall file a new or an additional surety
 27 bond in an amount that ensures that the registered CPAP
 28 provider's surety bond under this section is equal to the amount
 29 determined by the director under subsection (b)(4).

30 (d) If the principal amount of a surety bond required under this
 31 section is reduced by payment of a claim or judgment, the
 32 registered CPAP provider for whom the bond is issued shall
 33 immediately notify the director of the reduction and, not later than
 34 thirty (30) days after notice by the director, file a new or an
 35 additional surety bond in an amount set by the director. The
 36 amount of the new or additional bond set by the director must be
 37 at least the amount of the bond before payment of the claim or
 38 judgment.

39 (e) If for any reason a surety terminates a bond issued under
 40 this section, the registered CPAP provider shall immediately notify
 41 the department and file a new surety bond in the amount
 42 determined by the director under subsection (b)(4).



1 (f) Cancellation of a surety bond issued under this section does
 2 not affect any liability incurred or accrued during the period when
 3 the surety bond was in effect.

4 (g) The director may obtain satisfaction from a surety bond
 5 issued under this section if the director incurs expenses, issues a
 6 final order, or recovers a final judgment under this chapter.

7 Sec. 4. (a) The department may adopt rules under IC 4-22-2,
 8 including emergency rules adopted in the manner provided by
 9 IC 4-22-2-37.1, to implement this chapter. Rules or emergency
 10 rules adopted by the department under this section must take effect
 11 by a date that will enable a person to apply to the department for
 12 a certificate of registration under this chapter beginning July 1,
 13 2016.

14 (b) Notwithstanding IC 4-22-2-37.1(g), an emergency rule
 15 adopted by the department in the manner provided by
 16 IC 4-22-2-37.1 to implement this chapter expires on the date a rule
 17 that supersedes the emergency rule is adopted by the department
 18 under IC 4-22-2-24 through IC 4-22-2-36.

19 Chapter 3. Contract Requirements and Disclosures

20 Sec. 1. (a) Before presenting a CPAP contract to a consumer
 21 claimant for the consumer claimant's signature, a CPAP provider
 22 shall ensure that the CPAP contract:

- 23 (1) is complete;
- 24 (2) has been filled in to include all amounts, dates, names,
 25 terms, provisions, and information specific to the CPAP
 26 contract, the CPAP provider, the consumer claimant, and the
 27 consumer claimant's civil proceeding; and
- 28 (3) meets the requirements of this chapter, including the
 29 disclosure requirements set forth in section 2 of this chapter.

30 (b) Each page of a CPAP contract must include the initials of the
 31 consumer claimant.

32 (c) If a consumer claimant is represented by an attorney in the
 33 civil proceeding on which a CPAP transaction is based, the CPAP
 34 contract must contain a written acknowledgment by the attorney
 35 that attests to the following:

- 36 (1) That to the best of the attorney's knowledge, all costs and
 37 charges relating to the CPAP transaction have been disclosed
 38 to the consumer claimant.
- 39 (2) That the attorney is being paid by the consumer claimant
 40 on a contingency basis under a written fee agreement.
- 41 (3) That all proceeds of the civil proceeding will be disbursed
 42 through:



- 1 (A) a trust account of the attorney; or
- 2 (B) a settlement fund established to receive the proceeds of
- 3 the civil proceeding on behalf of the consumer claimant.
- 4 (4) That the attorney is following the instructions of the
- 5 consumer claimant with respect to the CPAP transaction.
- 6 (5) That the attorney:
- 7 (A) has not received a referral fee or other consideration
- 8 from the CPAP provider; and
- 9 (B) agrees not to receive a referral fee or other
- 10 consideration from the CPAP provider at any time;
- 11 in connection with the CPAP transaction.
- 12 If the attorney retained by the consumer claimant in the consumer
- 13 claimant's civil proceeding does not complete the acknowledgment
- 14 required by this subsection, the CPAP contract, and the CPAP
- 15 transaction to which it pertains, are void. However, the CPAP
- 16 contract, and the CPAP transaction to which it pertains, remain
- 17 valid and enforceable if the consumer claimant or the attorney
- 18 terminates the representation. If, after the termination, the
- 19 consumer claimant retains a new attorney in connection with the
- 20 consumer claimant's civil proceeding, the new attorney must
- 21 complete an acknowledgment under this subsection for the CPAP
- 22 contract, and the CPAP transaction to which it pertains, to remain
- 23 valid and enforceable.
- 24 (d) A CPAP contract shall be executed in duplicate. Upon
- 25 execution of the CPAP contract, the CPAP provider shall:
- 26 (1) furnish one (1) duplicate original and at least one (1) copy
- 27 of the CPAP contract to the consumer claimant; and
- 28 (2) retain for the CPAP provider's records one (1) duplicate
- 29 original and at least one (1) copy of the CPAP contract.
- 30 (e) A CPAP provider may not use any CPAP contract form,
- 31 other than a standard CPAP contract form prescribed by the
- 32 department in rules adopted by the department under section 3 of
- 33 this chapter, in connection with a civil proceeding unless the
- 34 department first approves the CPAP contract form.
- 35 Sec. 2. (a) A CPAP contract must include the disclosures set
- 36 forth in this section. The disclosures required by this section:
- 37 (1) constitute material terms of the CPAP contract; and
- 38 (2) must:
- 39 (A) be set forth in at least 12 point boldface type and
- 40 comply with any other typeface or stylistic specifications
- 41 set forth in this section; and
- 42 (B) be placed clearly and conspicuously within the



1 contract.

2 (b) The front page of a CPAP contract must include, under
3 appropriate headings, language specifying the following:

4 (1) The funded amount to be paid to the consumer claimant
5 by the CPAP provider.

6 (2) The funding date.

7 (3) An itemization of all charges, whether assessed one (1)
8 time or on a recurring basis, that are payable or assignable by
9 the consumer claimant to the CPAP provider. For each
10 charge listed, the CPAP provider shall identify whether the
11 charge:

12 (A) is to be paid or assigned by the consumer claimant to
13 the CPAP provider from the proceeds, if any, of the
14 consumer claimant's civil proceeding; or

15 (B) is otherwise payable by the consumer claimant to the
16 CPAP provider.

17 Charges described in clause (A) must be included in the
18 payment schedule described in subdivision (5). For charges
19 described in clause (B), the CPAP provider shall set forth a
20 separate payment schedule identifying the dates and amounts
21 due.

22 (4) An identification of the following amounts to be paid or
23 assigned by the consumer claimant to the CPAP provider if
24 the resolution of the consumer claimant's civil proceeding
25 results in proceeds to the consumer claimant:

26 (A) The funded amount.

27 (B) The contract amount. In identifying the contract
28 amount under this clause, it is sufficient for the CPAP
29 provider to identify the method, formula, or multiplier (as
30 required by IC 24-4.3-4-2(1)(A)) by which the contract
31 amount will be determined as of the date on which the
32 CPAP provider receives payment from the proceeds of the
33 consumer claimant's civil proceeding.

34 (5) For amounts payable or assignable by the consumer
35 claimant to the CPAP provider from the proceeds of the
36 consumer claimant's civil proceeding (including the funded
37 amount, the contract amount, and any applicable charges), a
38 payment schedule that lists:

39 (A) the dates; and

40 (B) the amounts payable or assignable by the consumer
41 claimant to the CPAP provider as of each date listed
42 (regardless of whether and when such amounts are



1 actually paid or assigned, depending on the outcome of the
 2 consumer's civil proceeding and the date on which any
 3 proceeds from the civil proceeding become available for
 4 disbursement);

5 beginning with the date that is one hundred eighty (180) days
 6 after the funding date, continuing every one hundred eighty
 7 (180) days thereafter, and ending with the date the amounts
 8 are actually paid or assigned to the CPAP provider, as
 9 required by IC 24-4.3-4-2(1)(B).

10 (c) A CPAP contract must contain, in text that is surrounded by
 11 a box, a statement setting forth a right of rescission that allows the
 12 consumer claimant to cancel the contract without penalty or
 13 further obligation if the consumer claimant does either of the
 14 following:

15 (1) Not later than five (5) days after the funding date, returns
 16 to the CPAP provider the full funded amount by hand
 17 delivering the CPAP provider's uncashed check to the CPAP
 18 provider's business location.

19 (2) Mails, to the address specified in the CPAP contract and
 20 by insured, certified, or registered United States mail:

21 (A) a notice of cancellation; and

22 (B) the full funded amount, in the form of:

23 (i) the CPAP provider's uncashed check;

24 (ii) a registered or certified check; or

25 (iii) a money order;

26 in a mailing that is postmarked not later than five (5) days
 27 after the funding date.

28 (d) A CPAP contract must contain, in text that is printed in all
 29 capital letters and surrounded by a box, the following statement:

30 "THE FUNDED AMOUNT (or other term used by the CPAP
 31 provider in the CPAP contract), THE CONTRACT
 32 AMOUNT (or other term used by the CPAP provider in the
 33 CPAP contract), AND THE _____ (insert names of any
 34 charges the repayment of which is to be sourced from the
 35 proceeds of the consumer claimant's civil proceeding) ARE
 36 PAYABLE ONLY FROM THE PROCEEDS OF YOUR
 37 CIVIL PROCEEDING, AND ONLY TO THE EXTENT
 38 THAT THERE ARE AVAILABLE PROCEEDS FROM
 39 YOUR CIVIL PROCEEDING. YOU WILL NOT OWE
 40 (insert name of CPAP provider) THE FUNDED AMOUNT
 41 (or other term used by the CPAP provider in the CPAP
 42 contract), THE CONTRACT AMOUNT (or other term used



by the CPAP provider in the CPAP contract), OR THE
 _____ (insert names of any charges the repayment of
 which is to be sourced from the proceeds of the consumer
 claimant's civil proceeding) IF THERE ARE NO PROCEEDS
 FROM YOUR CIVIL PROCEEDING, UNLESS YOU OR
 YOUR ATTORNEY HAVE VIOLATED ANY MATERIAL
 TERM OF THIS CONTRACT OR YOU HAVE
 COMMITTED FRAUD AGAINST (insert name of CPAP
 provider).".

(e) A CPAP contract must contain a statement as to whether
 and under what circumstances:

(1) the consumer claimant's rights and obligations under the
 CPAP contract may be sold, assigned, pledged, or transferred
 by the consumer claimant and, if so, whether and at what
 point the consumer claimant must obtain the consent of, or
 provide notice to, the CPAP provider of such sale, assignment,
 pledge, or transfer; and

(2) the CPAP provider's rights and obligations under a CPAP
 contract may be sold, assigned, pledged, or transferred by the
 CPAP provider and, if so, whether and at what point the
 CPAP provider must obtain the consent of, or provide notice
 to, the consumer claimant of such sale, assignment, pledge, or
 transfer.

(f) A CPAP contract must contain a statement as to whether,
 how often, and under what circumstances the CPAP provider may
 request from the consumer claimant or the consumer claimant's
 attorney periodic updates or other information concerning the
 consumer claimant's civil proceeding, including any of the
 following documents or information that may be sought by the
 CPAP provider:

(1) Notice of any receipt by the consumer claimant or the
 consumer claimant's attorney of proceeds, or written
 promises to pay proceeds, from the civil proceeding.

(2) Copies of nonprivileged materials, including pleadings,
 notices, orders, motions, briefs, or other documents filed in
 the civil proceeding by any person or party.

(3) Documents or verbal information concerning
 nonprivileged matters or developments in connection with the
 civil proceeding.

(g) A CPAP contract must contain the following statement
 immediately above the signature line for the consumer claimant:

"Do not sign this contract before you read it completely or if



1 it contains any blank spaces. You are entitled to a completely
 2 filled in copy of this contract. Before you sign this contract,
 3 you should obtain the advice of an attorney. Depending on
 4 your circumstances, you may want to consult an accountant,
 5 a tax consultant, a public or private benefits planning
 6 professional, or a financial professional. By signing this
 7 contract, you acknowledge that if you are represented by an
 8 attorney in your civil proceeding, your attorney has provided
 9 no tax, accounting, public or private benefits planning, or
 10 financial advice concerning this transaction between you and
 11 (insert name of CPAP provider).".

12 **Sec. 3. (a)** The department may adopt rules under IC 4-22-2,
 13 including emergency rules adopted in the manner provided by
 14 IC 4-22-2-37.1, to implement this chapter. In adopting rules or
 15 emergency rules under this section, the department may prescribe
 16 a standard CPAP contract form that complies with this chapter for
 17 use by CPAP providers in entering into CPAP transactions with
 18 consumer claimants. Rules or emergency rules adopted by the
 19 department to prescribe a standard CPAP contract form must take
 20 effect by a date that will enable such a form to be available to
 21 CPAP providers beginning July 1, 2016.

22 **(b)** Notwithstanding IC 4-22-2-37.1(g), an emergency rule
 23 adopted by the department in the manner provided by
 24 IC 4-22-2-37.1 to implement this chapter expires on the date a rule
 25 that supersedes the emergency rule is adopted by the department
 26 under IC 4-22-2-24 through IC 4-22-2-36.

27 **Chapter 4. Requirements and Prohibitions**

28 **Sec. 1.** Subject to section 3(c) of this chapter, the total funded
 29 amount in a CPAP transaction in connection with any one (1) civil
 30 proceeding may not exceed five thousand dollars (\$5,000). A CPAP
 31 provider shall transfer the funded amount to a consumer claimant
 32 not later than the funding date, as set forth in the CPAP contract,
 33 by one (1) of the following means:

34 **(1)** Personal delivery.

35 **(2)** Wire, automated clearing house, or other electronic
 36 means.

37 **(3)** Insured, certified, or registered United States mail.

38 **Sec. 2.** Subject to section 3 of this chapter, the contract amount
 39 in a CPAP transaction:

40 **(1)** must be calculated as a predetermined amount:

41 **(A)** according to a method, formula, or multiplier
 42 determined by the CPAP provider, as described in



1 IC 24-4.3-3-2(b)(4)(B); and

2 (B) based on one hundred eighty (180) day intervals
3 measured from the funding date through the date of
4 payment or assignment to the CPAP provider, as described
5 in IC 24-4.3-3-2(b)(5);

6 (2) may be based on, or determined as a percentage of, the
7 funded amount; and

8 (3) may not be determined as a percentage of the consumer
9 claimant's recovery from the consumer claimant's civil
10 proceeding.

11 Sec. 3. (a) Regardless of the contract amount that results from
12 the calculation described in section 2(1) of this chapter, a CPAP
13 provider may not assess or collect, with respect to any one (1)
14 CPAP transaction, a contract amount that exceeds the limit on
15 finance charges that applies to supervised loans under
16 IC 24-4.5-3-508, as applied to the funded amount.

17 (b) A CPAP provider may not impose a charge for obtaining or
18 preparing documents:

19 (1) more than one (1) time with respect to any one (1) CPAP
20 transaction; or

21 (2) in an amount that exceeds five hundred dollars (\$500).

22 (c) A CPAP provider may not:

23 (1) structure a CPAP transaction arising from the same civil
24 proceeding:

25 (A) as more than one (1) transaction; or

26 (B) in any other manner; or

27 (2) impose any charges under the CPAP contract, whether
28 payable or assignable from the proceeds of the consumer
29 claimant's civil proceeding or otherwise payable to the CPAP
30 provider:

31 (A) in violation of subsection (b);

32 (B) in an amount that exceeds any amount, percentage,
33 limit, or cap concerning charges and prescribed by the
34 department in rules adopted under section 7 of this
35 chapter; or

36 (C) in an amount that grossly exceeds the value of the
37 services provided or costs incurred by the CPAP provider
38 in consideration of the charges;

39 for the purpose of avoiding the prohibitions set forth in subsection
40 (a) or (b) or the limitation on the funded amount set forth in
41 section 1 of this chapter.

42 Sec. 4. (a) Subject to IC 24-4.3-3-2(e)(1) and except as otherwise



provided in a CPAP contract and agreed to by a consumer claimant and the consumer claimant's attorney, a contingent right to receive a share of the potential proceeds of a consumer claimant's civil proceeding (whether the proceeds result from a judgment, a settlement, or some other resolution) may be sold, assigned, pledged, or transferred by the consumer claimant.

(b) Subject to IC 24-4.3-3-2(e)(2) and except as otherwise provided in a CPAP contract and agreed to by a consumer claimant and the consumer claimant's attorney, a CPAP provider's rights and obligations under a CPAP contract may be sold, assigned, pledged, or transferred by the CPAP provider.

(c) A CPAP provider's right to receive a share of the potential proceeds of a consumer claimant's civil proceeding is subordinate only to any:

- (1) attorney's lien;
- (2) medical liens; or
- (3) statutory liens;

related to the consumer claimant's civil proceeding. All other liens take priority according to when they attach or by normal operation of law.

Sec. 5. A CPAP provider may not do any of the following:

(1) Pay or offer to pay any:

- (A) attorney or law firm;
- (B) medical or health care provider;
- (C) chiropractor; or
- (D) physical therapist or occupational therapist;

or any of their employees, for referring a consumer claimant to the CPAP provider or the CPAP provider's business.

(2) Accept any commissions, referral fees, rebates, or other forms of consideration from any:

- (A) attorney or law firm;
- (B) medical or health care provider;
- (C) chiropractor; or
- (D) physical therapist or occupational therapist;

or any of their employees, in connection with a CPAP transaction or a potential CPAP transaction.

(3) Advertise or communicate in Indiana any materially false or misleading information concerning the CPAP provider's products and services, whether such an advertisement or communication is by mail, brochure, telephone, print, radio, television, the Internet, or electronic means.

(4) Refer, in connection with a CPAP transaction, a consumer



claimant to any:

(A) attorney or law firm;

(B) medical or health care provider;

(C) chiropractor; or

(D) physical therapist or occupational therapist;

or any of their employees. However, if a consumer claimant who has consulted the CPAP provider or entered into a CPAP transaction with the CPAP provider needs legal representation in connection with the consumer claimant's civil proceeding or the CPAP transaction, the CPAP provider may refer the consumer claimant to a local or state bar association's attorney referral service.

(5) Knowingly enter into a CPAP transaction with a consumer claimant who has previously entered into a CPAP transaction with another CPAP provider in connection with the same civil proceeding, unless the second CPAP provider first pays to, or purchases from, the original CPAP provider:

(A) any outstanding amounts (including the funded amount, the contract amount, and any charges) under the first CPAP provider's CPAP contract with the consumer claimant; or

(B) any other amount agreed to by the CPAP providers; except as otherwise prohibited in the CPAP contract between the original CPAP provider and the consumer claimant. However, two (2) or more CPAP providers may agree to contemporaneously enter into CPAP transactions with a consumer claimant in connection with the same civil proceeding, if the consumer claimant and the consumer claimant's attorney consent in writing to the arrangement.

(6) Make, or receive the right to make, any decisions with respect to the conduct, settlement, or resolution of a consumer claimant's civil proceeding. However, a CPAP provider may request from a consumer claimant or the consumer claimant's attorney periodic updates or other information concerning the consumer claimant's civil proceeding, if the nature, timing, and frequency of the requests:

(A) are set forth in the CPAP contract, as required by IC 24-4.3-3-2(f); and

(B) are not such as to be harassing to the consumer claimant or the consumer claimant's attorney.

A CPAP provider's right to request updates or other information under this subdivision does not limit, waive, or



abrogate the scope or nature of, and is subject to, any applicable statutory or common law privilege, including the work product doctrine or the attorney client privilege.

(7) Pay or offer to pay for court costs, filing fees, or attorney's fees in connection with a consumer claimant's civil proceeding using funds from the CPAP transaction or any other funds.

Sec. 6. (a) An attorney or a law firm retained by a consumer claimant in a civil proceeding on which a CPAP transaction is based may not have a financial interest in the CPAP provider that enters into the CPAP transaction with the consumer claimant.

(b) An attorney or a law firm that refers a consumer claimant to the attorney or law firm retained by a consumer claimant in a civil proceeding on which a CPAP transaction is based may not have a financial interest in the CPAP provider that enters into the CPAP transaction with the consumer claimant.

Sec. 7. (a) The department may adopt rules under IC 4-22-2, including emergency rules adopted in the manner provided by IC 4-22-2-37.1, to implement this chapter. Subject to section 3(b) of this chapter, in adopting rules or emergency rules under this section, the department may set caps or other limits on the charges that a CPAP provider may impose for specified services provided, or costs incurred, by a CPAP provider under a CPAP contract, as described in section 3(c)(2)(B) of this chapter.

(b) Notwithstanding IC 4-22-2-37.1(g), an emergency rule adopted by the department in the manner provided by IC 4-22-2-37.1 to implement this chapter expires on the date a rule that supersedes the emergency rule is adopted by the department under IC 4-22-2-24 through IC 4-22-2-36.

Chapter 5. Violations

Sec. 1. For purposes of this chapter, a violation of, or compliance with, this article includes a violation of, or compliance with:

- (1) the provisions set forth in this article;
- (2) rules adopted by the department under this article;
- (3) any policy, guidance document, or order adopted or issued by the department in connection with this article; or
- (4) any other state or federal law, regulation, or rule applicable to CPAP transactions or CPAP providers.

Sec. 2. (a) The department may examine the books, accounts, and records of a CPAP provider and may make investigations to determine compliance with this article.

(b) A CPAP provider shall pay all reasonably incurred costs of



1 an examination under this section in accordance with the fee
 2 schedule adopted under IC 28-11-3-5. A fee established by the
 3 department under IC 28-11-3-5 may be charged for each day a fee
 4 under this section is delinquent.

5 (c) To discover violations of this article or to secure information
 6 necessary for the enforcement of this article, the department may
 7 investigate any:

8 (1) CPAP provider that holds a registration certificate under
 9 this article; or

10 (2) person that the department suspects to be operating as a
 11 CPAP provider in Indiana:

12 (A) without a certificate of registration; or

13 (B) otherwise in violation of this article.

14 The department has all investigatory and enforcement authority
 15 under this chapter that the department has under IC 28-11 with
 16 respect to financial institutions. If the department conducts an
 17 investigation under this section, the registered CPAP provider or
 18 other person investigated shall pay all reasonably incurred costs of
 19 the investigation in accordance with the fee schedule adopted
 20 under IC 28-11-3-5.

21 (d) If a CPAP provider contracts with an outside vendor to
 22 provide a service that would otherwise be undertaken internally by
 23 the CPAP provider and be subject to the department's routine
 24 examination procedures, the person that provides the service to the
 25 CPAP provider shall, at the request of the director, submit to an
 26 examination by the department. If the director determines that an
 27 examination under this subsection is necessary or desirable, the
 28 examination may be made at the expense of the person to be
 29 examined. If the person to be examined under this subsection
 30 refuses to permit the examination to be made, the director may
 31 order any CPAP provider that receives services from the person
 32 refusing the examination to:

33 (1) discontinue receiving one (1) or more services from the
 34 person; or

35 (2) otherwise cease conducting business with the person.

36 Sec. 3. (a) If the department determines that a reasonable belief
 37 exists that a person is operating without a valid certificate of
 38 registration or in violation of this article, the department may
 39 investigate the person.

40 (b) If a person knowingly acts as a CPAP provider without a
 41 certificate of registration required by IC 24-4.3-2, any resulting
 42 CPAP contract or CPAP transaction entered into by the CPAP



1 provider and a consumer claimant is void and the consumer
 2 claimant is not required to pay to the CPAP provider any amounts
 3 in connection with the CPAP contract or CPAP transaction,
 4 including the funded amount, the contract amount, or any charges.
 5 If the consumer claimant has paid to the CPAP provider any
 6 amounts in connection with the CPAP contract or CPAP
 7 transaction, the consumer claimant, or the department on behalf
 8 of the consumer claimant, is entitled to recover the amounts from
 9 the CPAP provider.

10 Sec. 4. (a) If the department determines, after notice and an
 11 opportunity to be heard, that a person has violated this article, the
 12 department may, in addition to or instead of all other remedies
 13 available under this article, impose upon the person a civil penalty
 14 not greater than ten thousand dollars (\$10,000) for each violation.

15 (b) In addition to or instead of imposing a civil penalty under
 16 subsection (a), the department may bring a civil action against a
 17 person for violating this article.

18 (c) In an action brought under subsection (b), if the court finds
 19 that the defendant is guilty of violating this article, the court may
 20 assess a civil penalty not to exceed five thousand dollars (\$5,000)
 21 for each violation.

22 (d) Civil penalties collected under this section shall be deposited
 23 into the financial institutions fund established by IC 28-11-2-9.

24 Sec. 5. (a) The department may adopt rules under IC 4-22-2,
 25 including emergency rules adopted in the manner provided by
 26 IC 4-22-2-37.1, to implement this chapter.

27 (b) Notwithstanding IC 4-22-2-37.1(g), an emergency rule
 28 adopted by the department in the manner provided by
 29 IC 4-22-2-37.1 to implement this chapter expires on the date a rule
 30 that supersedes the emergency rule is adopted by the department
 31 under IC 4-22-2-24 through IC 4-22-2-36.

32 SECTION 4. IC 24-4.5-1-202, AS AMENDED BY P.L.27-2012,
 33 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 34 UPON PASSAGE]: Sec. 202. (a) As used in this section, "balloon
 35 payment", with respect to a mortgage transaction, means any payment
 36 that:

- 37 (1) the creditor requires the debtor to make at any time during the
- 38 term of the mortgage;
- 39 (2) represents the entire amount of the outstanding balance with
- 40 respect to the mortgage; and
- 41 (3) the entire amount of which is due as of a specified date or at
- 42 the end of a specified period;



1 if the aggregate amount of the minimum periodic payments required
 2 under the mortgage would not fully amortize the outstanding balance
 3 by the specified date or at the end of the specified period. The term
 4 does not include a payment required by a creditor under a due-on-sale
 5 clause (as defined in 12 U.S.C. 1701j-3(a)) or a payment required by
 6 a creditor under a provision in the mortgage that permits the creditor
 7 to accelerate the debt upon the debtor's default or failure to abide by the
 8 material terms of the mortgage.

9 (b) This article does not apply to the following:

10 (1) Extensions of credit to government or governmental agencies
 11 or instrumentalities.

12 (2) The sale of insurance by an insurer, except as otherwise
 13 provided in the chapter on insurance (IC 24-4.5-4).

14 (3) Transactions under public utility, municipal utility, or
 15 common carrier tariffs if a subdivision or agency of this state or
 16 of the United States regulates the charges for the services
 17 involved, the charges for delayed payment, and any discount
 18 allowed for early payment.

19 (4) The rates and charges and the disclosure of rates and charges
 20 of a licensed pawnbroker established in accordance with a statute
 21 or ordinance concerning these matters.

22 (5) A sale of goods, services, or an interest in land in which the
 23 goods, services, or interest in land are purchased primarily for a
 24 purpose other than a personal, family, or household purpose.

25 (6) A loan in which the debt is incurred primarily for a purpose
 26 other than a personal, family, or household purpose.

27 (7) An extension of credit primarily for a business, a commercial,
 28 or an agricultural purpose.

29 (8) An installment agreement for the purchase of home fuels in
 30 which a finance charge is not imposed.

31 (9) Loans made, insured, or guaranteed under a program
 32 authorized by Title IV of the Higher Education Act of 1965 (20
 33 U.S.C. 1070 et seq.).

34 (10) Transactions in securities or commodities accounts in which
 35 credit is extended by a broker-dealer registered with the Securities
 36 and Exchange Commission or the Commodity Futures Trading
 37 Commission.

38 (11) Except for IC 24-4.5-3-502.1(2), IC 24-4.5-3-503.3,
 39 IC 24-4.5-3-505(4), and IC 24-4.5-3-505(5), a loan made:

40 (A) in compliance with the requirements of; and

41 (B) by a community development corporation (as defined in
 42 IC 4-4-28-2) acting as a subrecipient of funds from;



1 the Indiana housing and community development authority
2 established by IC 5-20-1-3.

3 (12) Except for IC 24-4.5-3-502.1(2), IC 24-4.5-3-503.3,
4 IC 24-4.5-3-505(4), and IC 24-4.5-3-505(5), a subordinate lien
5 mortgage transaction made by an entity that exclusively uses
6 funds provided by the United States Department of Housing and
7 Urban Development under Title 1 of the Housing and Community
8 Development Act of 1974, Public Law 93-383, as amended (42
9 U.S.C. 5301 et seq.).

10 (13) The United States, any state or local government, or any
11 agency or instrumentality of any governmental entity, including
12 United States government sponsored enterprises.

13 (14) A bona fide nonprofit organization not operating in a
14 commercial context, as determined by the director, if the
15 following criteria are satisfied:

16 (A) Subject to clause (B), the organization originates only one

17 (1) or both of the following types of mortgage transactions:

18 (i) Zero (0) interest first lien mortgage transactions.

19 (ii) Zero (0) interest subordinate lien mortgage transactions.

20 (B) The organization does not require, under the terms of the
21 mortgage or otherwise, balloon payments with respect to the
22 mortgage transactions described in clause (A).

23 (C) The organization is exempt from federal income taxation
24 under Section 501(c)(3) of the Internal Revenue Code.

25 (D) The organization's primary purpose is to serve the public
26 by helping low income individuals and families build, repair,
27 and purchase housing.

28 (E) The organization uses only:

29 (i) unpaid volunteers; or

30 (ii) employees whose compensation is not based on the
31 number or size of any mortgage transactions that the
32 employees originate;

33 to originate the mortgage transactions described in clause (A).

34 (F) The organization does not charge loan origination fees in
35 connection with the mortgage transactions described in clause
36 (A).

37 (15) A bona fide nonprofit organization (as defined in section
38 301.5(45) of this chapter) if the following criteria are satisfied:

39 (a) For each calendar year that the organization seeks the
40 exemption provided by this subdivision, the organization
41 certifies, not later than December 31 of the preceding calendar
42 year and on a form prescribed by the director and accompanied



1 by such documentation as required by the director, that the
 2 organization is a bona fide nonprofit organization (as defined
 3 in section 301.5(45) of this chapter).

4 (b) The director determines that the organization originates
 5 only mortgage transactions that are favorable to the debtor. For
 6 purposes of this clause, a mortgage transaction is favorable to
 7 the debtor if the director determines that the terms of the
 8 mortgage transaction are consistent with terms of mortgage
 9 transactions made in a public or charitable context, rather than
 10 in a commercial context.

11 **(c) Except:**

12 **(1) for the limit on finance charges that applies to supervised**
 13 **loans under IC 24-4.5-3-508, as applied to the funded amount**
 14 **(as defined in IC 24-4.3-1-11) in a civil proceeding advance**
 15 **payment transaction (as defined in IC 24-4.3-1-6), as set forth**
 16 **in IC 24-4.3-4-3(a); and**

17 **(2) as otherwise determined by a court with jurisdiction;**
 18 **this article does not apply to a civil proceeding advance payment**
 19 **transaction (as defined in IC 24-4.3-1-6). However, a civil**
 20 **proceeding advance payment transaction (as defined in**
 21 **IC 24-4.3-1-6) is subject to regulation by the department under**
 22 **IC 24-4.3 and to all requirements, prohibitions, and penalties set**
 23 **forth in IC 24-4.3, and a civil proceeding advance payment**
 24 **provider (as defined in IC 24-4.3-1-5) is subject to the registration**
 25 **requirements and to all applicable requirements, prohibitions, and**
 26 **penalties set forth in IC 24-4.3.**

27 **SECTION 5. An emergency is declared for this act.**

